

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 9

Introduced by Assembly Member Ammiano

December 6, 2010

~~An act relating to education.~~ *An act to add Sections 234.4, 234.5, 234.6, 234.7, 234.8, and 48900.45 to the Education Code, relating to pupil rights.*

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Ammiano. ~~Education.~~ *Pupil rights: bullying.*

Existing law provides that it is the policy of the state to afford all persons in public schools, regardless of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes, equal rights and opportunities in the educational institutions of the state, and that it is the purpose of existing law to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law requires the State Department of Education to develop a model handout, posted on appropriate department Internet Web sites, describing the rights and obligations set forth in these provisions and the policies addressing bias-related discrimination and harassment in schools. Existing law also requires the department to monitor adherence to these provisions and, as part of its regular monitoring and review of local educational agencies, to assess whether local educational agencies have adopted a policy that prohibits discrimination and harassment and a process for receiving and investigating complaints of discrimination and harassment, as specified.

Consistent with these provisions, this bill would require each school district to adopt a policy prohibiting discrimination, harassment, intimidation, and bullying, and to adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying, on or before July 1, 2012. The bill would require school districts to provide information to school personnel, school district board members, and pupils on the policy and the process, as specified.

Because this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

The bill would also require all local educational agencies to collect data related to pupil experiences with discrimination, harassment, intimidation, and bullying, as specified. The bill would require the department, in the next revision of either the California Healthy Kids Survey or, if that is not feasible, in the next revision of the California Student Survey, to include questions seeking information on discrimination, harassment, intimidation, and bullying and require local educational agencies to survey their pupils with those questions. The bill would also require the department to request that the Youth Risk Behavior Survey include questions seeking information on discrimination, harassment, intimidation, and bullying, as specified. The bill would require the Superintendent of Public Instruction, at the beginning of each school year, to post on his or her Internet Web site and to provide to each school district a list of statewide resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying, and their families.

Under existing law a pupil enrolled in any grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

This bill would provide, notwithstanding any other law, that a pupil who is found to have committed an act of discrimination, harassment, intimidation, or bullying, as specified, shall not automatically be subject

to suspension or expulsion, but shall be subject to alternative discipline or progressive discipline, and suspension only when other means of correction fail to bring about proper conduct, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires specified school personnel to report known or suspected instances of child abuse, as defined, to designated law enforcement entities.~~

~~This bill would state the intent of the Legislature to enact legislation to protect pupils from acts of bullying by requiring school personnel to report known or suspected instances of bullying to law enforcement entities.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. (a) The Legislature finds and declares that the*
- 2 *State of California is committed to a safe and civil educational*
- 3 *environment for all pupils, employees, parents and legal guardians,*
- 4 *volunteers, and patrons that is free from discrimination,*
- 5 *harassment, intimidation, or bullying.*
- 6 *(b) The Legislature finds and declares that the intent of this act*
- 7 *is to clarify and supplement the existing law on discrimination,*
- 8 *harassment, intimidation, and bullying in public schools.*
- 9 *(c) The Legislature finds and declares all of the following:*
- 10 *(1) Pupils who are subjected to discrimination, harassment,*
- 11 *intimidation, or bullying may suffer long-term social, emotional,*
- 12 *and psychological harms.*
- 13 *(2) The public policy of this state is to reduce and ultimately*
- 14 *eliminate school-based discrimination, harassment, intimidation,*
- 15 *and bullying.*
- 16 *(3) The public policy of this state is to provide pupils with a*
- 17 *safe school environment in which all pupils are included and*

1 *respected and have an equal opportunity to participate in all school*
2 *activities and events.*

3 *(4) The most effective way to reduce discrimination, harassment,*
4 *intimidation, and bullying is to create a schoolwide culture of*
5 *inclusion and respect for differences.*

6 *(5) The public policy of this state is to provide support for youth*
7 *who are victimized by discrimination, harassment, intimidation,*
8 *or bullying and support for the families of those youth.*

9 *(6) The public policy of this state is to provide effective*
10 *interventions for youth who engage in acts of discrimination,*
11 *harassment, intimidation, and bullying to help them change their*
12 *behavior and avoid entering the criminal justice system.*

13 *(7) The public policy of this state is to ensure that laws and*
14 *policies that prohibit discrimination, harassment, intimidation,*
15 *and bullying are enforced evenhandedly and are not*
16 *disproportionately applied to any class or group.*

17 *SEC. 2. Section 234.4 is added to the Education Code, to read:*

18 *234.4. (a) Consistent with subdivision (a) of Section 234.1,*
19 *on or before July 1, 2012, each school district shall adopt a policy*
20 *prohibiting discrimination, harassment, intimidation, and bullying.*

21 *(b) A school district shall have local control over the content*
22 *of the policy, except that the policy shall contain, at a minimum,*
23 *all of the following components:*

24 *(1) A statement that all pupils have the right to participate fully*
25 *in the educational process, free from discrimination, harassment,*
26 *intimidation, and bullying pursuant to subdivision (a) of Section*
27 *201.*

28 *(2) A statement that each school in the district has an affirmative*
29 *obligation to combat all forms of bias and a responsibility to*
30 *provide equal educational opportunity pursuant to subdivision (b)*
31 *of Section 201.*

32 *(3) A statement that California law and school district policy*
33 *prohibit discrimination, harassment, intimidation, and bullying*
34 *based upon any of the actual or perceived characteristics contained*
35 *in the definition of hate crimes set forth in Section 422.55 of the*
36 *Penal Code, any of the actual or perceived characteristics listed*
37 *in Section 220, and disability, gender, gender identity, gender*
38 *expression, nationality, race or ethnicity, religion, sexual*
39 *orientation, or association with a person or group with one or*
40 *more of these actual or perceived characteristics. School districts*

1 are also encouraged to prohibit discrimination, harassment,
2 intimidation, or bullying more generally, but the statement must
3 contain a list of the characteristics set forth in Section 220.

4 (4) A description of the school district's procedure for
5 addressing complaints of discrimination, harassment, intimidation,
6 and bullying pursuant to subdivision (a) of Section 234.5.

7 (5) The names of two or more administrative personnel in each
8 school as required by subdivision (c) of Section 234.5.

9 (6) A statement that all school personnel who witness an act of
10 discrimination, harassment, intimidation, or bullying are required
11 take immediate steps to intervene when safe to do so.

12 (7) A statement that the policy applies to all acts related to
13 school activity or school attendance occurring within a school
14 under the jurisdiction of the superintendent of the school district
15 or principal or within any other school district that occur at any
16 time, including, but not limited to, any of the following:

17 (A) While on school grounds.

18 (B) While going to or coming from school.

19 (C) During the lunch period whether on or off campus.

20 (D) During, or while going to or coming from, a
21 school-sponsored activity.

22 (8) An attached copy of the written complaint form published
23 by the school pursuant to subparagraph (3) of subdivision (b) of
24 Section 234.5.

25 (9) A link to the Superintendent's list of statewide resources for
26 youth who have experienced discrimination, harassment,
27 intimidation, or bullying and for the families of those youth
28 pursuant to Section 234.7.

29 (c) The policy shall be posted and publicized on or before July
30 1, 2012, as follows:

31 (1) In all parent-student handbooks issued in the school district,
32 which shall also include a statement that pupils are expected to
33 contribute to building a culture of inclusion and respect.

34 (2) On the school district's Internet Web site and all individual
35 school Web sites.

36 (3) In all school district and school administrative offices.

37 (d) A statement notifying school personnel and pupils of the
38 existence of the policy, and where a written copy of the policy is
39 available in the school and the school district, shall be publicized
40 and posted on or before July 1, 2012, as follows:

1 (1) *The statement shall include the following language:*

2
3 *“Discrimination, harassment, intimidation, and bullying are not*
4 *acceptable ways to treat others. California law prohibits*
5 *discrimination, harassment, intimidation, and bullying based on*
6 *a student’s actual or perceived disability, gender, gender identity,*
7 *gender expression, nationality, race or ethnicity, religion, sexual*
8 *orientation, or association with a person or group with one or*
9 *more of these actual or perceived characteristics.*

10 *“Tell a teacher or a school employee if you see or experience*
11 *discrimination, harassment, intimidation, or bullying. You have*
12 *the right to file a complaint and to have the school protect you.*
13 *Complaint forms are available on all school district Internet Web*
14 *sites and in all school and administrative offices.”*

15
16 (2) *The statement shall be posted in all teacher lounges, staff*
17 *rooms, classrooms, gyms, locker rooms, bathrooms, and cafeterias*
18 *in each school.*

19 (e) *The policy and the statement shall be translated pursuant*
20 *to Section 48985. If translated, the policy and the statement shall*
21 *be publicized and posted pursuant to subdivisions (c) and (d) in*
22 *both the English and non-English versions.*

23 SEC. 3. *Section 234.5 is added to the Education Code, to read:*
24 234.5. (a) *Consistent with subdivision (b) of Section 234.1,*
25 *on or before July 1, 2012, each school district shall adopt a process*
26 *for receiving and investigating complaints of discrimination,*
27 *harassment, intimidation, and bullying.*

28 (b) *A school district shall have local control over the content*
29 *of the complaint process and may use the department’s Uniform*
30 *Complaint Procedures as set forth in department regulations,*
31 *except that the process for receiving and investigating complaints*
32 *of discrimination, harassment, intimidation, and bullying shall*
33 *include all of the following components:*

34 (1) *A requirement that if school personnel witness an act of*
35 *discrimination, harassment, intimidation, or bullying he or she*
36 *shall take immediate steps to intervene when safe to do so.*

37 (2) *A timeline for each school in the school district or the school*
38 *district to investigate and resolve complaints of discrimination,*
39 *harassment, intimidation, and bullying that does not exceed 30*
40 *working days from the date the complaint was received. The school,*

1 or if applicable, school district, shall report to the complainant
2 the resolution of the complaint within 45 working days of the initial
3 filing, if the complainant identifies himself or herself and requests
4 a response.

5 (3) A written complaint form published by the school district,
6 and made available at all school and school district offices and
7 on school and school district Internet Web sites, that includes, at
8 a minimum, all of the following:

9 (A) Questions intended to elicit a description of the incident
10 complained of and to identify any individual who may have been
11 involved or witnessed the incident.

12 (B) A checklist of the actual or perceived characteristics listed
13 in Section 220 to allow the complainant to identify whether one
14 of these characteristics was the basis of the discrimination,
15 harassment, intimidation, or bullying.

16 (C) A description of the complaint process and timeline.

17 (D) A statement that complainants will be protected from
18 retaliation and that those who investigate a complaint alleging
19 discrimination, harassment, intimidation, or bullying will protect
20 the confidentiality of the parties to the extent possible.

21 (E) A statement that the complaint may be filed anonymously,
22 and a space to indicate whether a response is requested.

23 (F) A description of the location at each school in the district
24 where the complaint may be filed, pursuant to subdivision (d).

25 (G) A statement that the complainant has a right to appeal a
26 school or school district resolution of a complaint and a description
27 of the appeal process, which, at a minimum, must describe the
28 process required by the department's Uniform Complaint
29 Procedures as set forth in department regulations.

30 (H) A statement that it is not necessary to exhaust any
31 administrative complaint process before pursuing civil law
32 remedies.

33 (I) The names of the two or more personnel on each school
34 campus identified pursuant to subdivision (c) and of the local
35 educational agency officer identified pursuant to subdivision (g)
36 of Section 234.1, responsible for ensuring district compliance with
37 the department's Uniform Complaint Procedures as set forth in
38 department regulations and Chapter 2 (commencing with Section
39 200).

1 (4) *A process for a pupil to report complaints of discrimination,*
2 *harassment, intimidation, or bullying to any school personnel or*
3 *school district through any means other than the written complaint*
4 *form that includes:*

5 (A) *A requirement that school district or school personnel report*
6 *the nonwritten complaint within 48 hours to the school or the*
7 *school district for investigation and resolution.*

8 (B) *A requirement that the pupil who made the nonwritten*
9 *complaint is provided with the same information included in the*
10 *written complaint form, as set forth in paragraph (3).*

11 (c) *Each school district shall identify at least two school*
12 *administrative personnel on each campus whose names and contact*
13 *information are posted with the school district policy prohibiting*
14 *discrimination, harassment, intimidation, and bullying, pursuant*
15 *to the requirements of subparagraph (I) of paragraph (3) of*
16 *subdivision (b). These personnel shall be:*

17 (1) *Knowledgeable about the school district's policy and*
18 *complaint procedure regarding discrimination, harassment,*
19 *intimidation, and bullying.*

20 (2) *Available to pupils as a resource to assist with complaints*
21 *of discrimination, harassment, intimidation, and bullying.*

22 (3) *Able to refer pupils to counseling, as appropriate.*

23 (d) *Each school district shall assign a specific location for every*
24 *school in the district where complaints may be filed, such as the*
25 *principal's office.*

26 (e) *If applicable, pursuant to Section 48985, each school district*
27 *shall make the complaint process available in the primary language*
28 *other than English.*

29 (f) *Consistent with subdivision (e) of Section 234.1, each school*
30 *district shall maintain documentation of complaints and their*
31 *resolution for a minimum of one review cycle of what is commonly*
32 *known as the department's Categorical Program Monitoring*
33 *process.*

34 SEC. 4. *Section 234.6 is added to the Education Code, to read:*

35 234.6. (a) *School districts, consistent with the provisions of*
36 *Article 3.6 (commencing with Section 32228) of Chapter 2 of Part*
37 *19, shall offer professional development training for school*
38 *personnel that covers all of the following topics:*

1 *(1) The school district policy prohibiting discrimination,*
2 *harassment, intimidation, and bullying, adopted pursuant to Section*
3 *234.4.*

4 *(2) The actual or perceived characteristics covered by the school*
5 *district policy prohibiting discrimination, harassment, intimidation,*
6 *or bullying, pursuant to paragraph (3) of subdivision (b) of Section*
7 *234.4.*

8 *(3) The school district process for receiving and investigating*
9 *complaints of discrimination, harassment, intimidation, and*
10 *bullying, adopted pursuant to Section 234.5.*

11 *(4) Techniques for intervening in discrimination, harassment,*
12 *intimidation, and bullying, including how teachers and other school*
13 *personnel can create a schoolwide culture of inclusion and respect*
14 *for differences without infringing on pupils' free speech rights.*

15 *(5) The harm caused by discrimination, harassment,*
16 *intimidation, and bullying.*

17 *(b) In the course of existing orientation provided to school*
18 *district board members, each school district shall provide school*
19 *board members with information about the school district policy*
20 *prohibiting discrimination, harassment, intimidation, and bullying,*
21 *adopted pursuant to Section 234.4, and the school district process*
22 *for receiving and investigating complaints of discrimination,*
23 *harassment, intimidation, and bullying, adopted pursuant to Section*
24 *234.5.*

25 *(c) In the course of existing orientation provided to pupils, each*
26 *school district, consistent with the provisions of Article 3.6*
27 *(commencing with Section 32228) of Chapter 2 of Part 19, shall*
28 *provide pupils with age-appropriate information about all of the*
29 *following:*

30 *(1) The school district policy prohibiting discrimination,*
31 *harassment, intimidation, and bullying, adopted pursuant to Section*
32 *234.4.*

33 *(2) The actual or perceived characteristics covered by the school*
34 *district policy prohibiting discrimination, harassment, intimidation,*
35 *or bullying, pursuant to paragraph (3) of subdivision (b) of Section*
36 *234.4.*

37 *(3) The school district process for receiving and investigating*
38 *complaints of discrimination, harassment, intimidation, and*
39 *bullying, adopted pursuant to Section 234.5.*

1 (4) *The difference between protected speech and discrimination,*
2 *harassment, intimidation, and bullying.*

3 (5) *The harm caused by discrimination, harassment,*
4 *intimidation, and bullying.*

5 SEC. 5. *Section 234.7 is added to the Education Code, to read:*

6 234.7. *At the beginning of each school year, the Superintendent*
7 *shall post on his or her Internet Web site and provide to each*
8 *school district a list of statewide resources, including*
9 *community-based organizations, that provide support to youth*
10 *who have been subjected to school-based discrimination,*
11 *harassment, intimidation, or bullying, and their families.*

12 SEC. 6. *Section 234.8 is added to the Education Code, to read:*

13 234.8. (a) *All local educational agencies shall collect data*
14 *related to pupil experiences with discrimination, harassment,*
15 *intimidation, and bullying each year. The data may be collected*
16 *through annual participation in the California Healthy Kids Survey*
17 *or, if inclusion of the information in that survey is not feasible,*
18 *through participation in the California Student Survey.*

19 (b) *The department shall, in the next revision of either the*
20 *California Healthy Kids Survey or, if that is not feasible, in the*
21 *next revision of the California Student Survey, include questions*
22 *seeking information on discrimination, harassment, intimidation,*
23 *and bullying based upon any of the actual or perceived*
24 *characteristics contained in the definition of hate crimes set forth*
25 *in Section 422.55 of the Penal Code, any of the actual or perceived*
26 *characteristics listed in Section 220, and disability, gender, gender*
27 *identity, gender expression, nationality, race or ethnicity, religion,*
28 *sexual orientation, or association with a person or group with one*
29 *or more of these actual or perceived characteristics, and require*
30 *local educational agencies to survey their pupils with those*
31 *questions.*

32 (c) *The department shall request that the Youth Risk Behavior*
33 *Survey include questions seeking information on discrimination,*
34 *harassment, intimidation, and bullying based upon any of the*
35 *actual or perceived characteristics contained in the definition of*
36 *hate crimes set forth in Section 422.55 of the Penal Code, any of*
37 *the actual or perceived characteristics listed in Section 220, and*
38 *disability, gender, gender identity, gender expression, nationality,*
39 *race or ethnicity, religion, sexual orientation, or association with*

1 *a person or group with one or more of these actual or perceived*
2 *characteristics.*

3 *SEC. 7. Section 48900.45 is added to the Education Code, to*
4 *read:*

5 *48900.45. (a) Notwithstanding any other law, a pupil who is*
6 *found to have committed an act of discrimination, harassment,*
7 *intimidation, or bullying under subdivision (r) of Section 48900,*
8 *or Section 48900.2, 48900.3, or 48900.4, shall not automatically*
9 *be subject to suspension or expulsion, but shall be subject to*
10 *alternative discipline or progressive discipline pursuant to this*
11 *section, and shall be subject to suspension pursuant to Section*
12 *48900.5 if he or she has access to, and is otherwise given the*
13 *opportunity to make up, missed coursework without additional*
14 *academic penalty.*

15 *(b) For the purpose of this section, “alternative discipline”*
16 *means disciplinary action other than suspension or expulsion that*
17 *is designed to correct and address the root causes of the pupils’s*
18 *specific misbehavior, while still retaining the pupil in class or*
19 *school, including, but not limited to:*

20 *(1) Meeting with pupil and parent.*

21 *(2) Reflective activities such as writing an essay about the*
22 *misbehavior.*

23 *(3) Mediation to address the conflict between pupils.*

24 *(4) Counseling, pursuant to subdivision (v) of Section 48900.*

25 *(5) Anger management, pursuant to subdivision (v) of Section*
26 *48900.*

27 *(6) Health counseling or intervention.*

28 *(7) Mental health counseling.*

29 *(8) Social-emotional cognitive skill building.*

30 *(9) Community service, pursuant to Section 48900.6.*

31 *(10) In-school detention or suspension, during lunchtime, after*
32 *school, or on weekends.*

33 *(c) For the purpose of this section, “progressive discipline”*
34 *means the process of dealing with pupil misbehavior in a manner*
35 *that gives notice of the inappropriate behavior to the pupil and*
36 *teaches him or her appropriate behavior by instituting increasingly*
37 *severe responses for repeated instances of the same type of*
38 *misbehavior.*

39 *SEC. 8. The Legislature finds and declares that it is the intent*
40 *of this act to clarify existing law as set forth in Chapter 2*

1 (commencing with Section 200) of Part 1 of Division 1 of Title 1
2 of the Education Code. The Legislature further finds and declares
3 that, under existing case and statutory law, a school district and
4 school could be held vicariously liable for any discrimination,
5 harassment, intimidation, or bullying by any individual who has
6 contact with pupils by virtue of employment or other contractual
7 relationship with the school district.

8 SEC. 9. This act shall not be construed to limit pupil rights to
9 free speech as protected by the United States Constitution, the
10 California Constitution, Sections 48907 and 48950 of the
11 Education Code, and other applicable law.

12 SEC. 10. This act shall not be construed to require an
13 exhaustion of any administrative complaint process before civil
14 law remedies may be pursued.

15 SEC. 11. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.

20 ~~SECTION 1. It is the intent of the Legislature to enact~~
21 ~~legislation to protect pupils from acts of bullying by requiring~~
22 ~~school personnel to report known or suspected instances of bullying~~
23 ~~to law enforcement entities.~~